

MENA LAMA, PETITIONER, VS. CONSOLACION N. VDA. DE APACIBLE, AND EUGENIO ANGELES, JUDGE OF THE COURT OF FIRST INSTANCE OF BATANGAS, RESPONDENTS.*G.R. No. L-1387. August 27, 1947*

Ponente: HILADO, J.

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Petitioner seeks the writs of certiorari, prohibition, and mandamus in his petition dated March 24, 1947, praying judgment: (a) revoking the appointment of the receiver in civil case No. 3932 of the Court of First Instance of Batangas, with declaration of nullity of the orders issued by respondent Judge Angeles on January 14, 17, and 21, 1947, as having been issued without or in excess of his jurisdiction or with abuse of discretion; (b) declaring null and void the proceedings had before the same judge on March 13, 1947, and issuing a writ of prohibition commanding him to desist from further proceeding with the case until further orders of this Court; (c) declaring null and void the order of the same respondent judge made in open court denying petitioner's motion to declare respondent Apacible in default in that case, and issuing a writ of mandamus directing, said judge to enter another order declaring respondent Apacible in default for failure to answer petitioner's counterclaim and allowing petitioner to present his evidence in support of said counterclaim; and (d) for general relief.

By his order of January 14, 1947 (Annex J), Judge Eugenio Angeles, respondent, for the reasons therein set forth, found that the appointment of a receiver in said case, as requested by the therein plaintiff, was appropriate and proper and accordingly appointed Marcelina Y. de Pagara as such receiver, requiring the appointee before entering upon the discharge of her duties to give a bond with sufficient sureties to be approved by the court in the sum of P2,000 and to take the necessary oath of office. The order of January 17, 1947 (Annex K), entered by the same judge in the same case changed the amount of the bond required of the receiver to P1,500. And in his order of January 21, 1947 (Annex L), the same judge clarified this order of January 14, 1947, by declaring that what he intended in fixing the bond therein at P2,000 was that said bond was to be given by the plaintiff (respondent Apacible) in favor of the defendant (petitioner herein) in that case to answer for whatever damages may be suffered by said defendant by reason of the appointment of the receiver, whereupon it was decreed that the sum of P2,000 which had been deposited by Marcelina Y. de Pagara (the receiver in question), on January 17, 1947, with the clerk of the lower court, was thereby considered and declared "to be the cash bond given by the plaintiff in favor of the defendant for whatever damages may be suffered by said defendant by reason of the appointment of a receiver in this case."

The question of the propriety of the appointment of the receiver in said civil case No. 3932 constitutes by far the most important one in the instant proceedings. We will defer its consideration until after disposing of the minor questions raised by the petition in paragraphs (b) and (c) of the prayer thereof.

Paragraph (b) of said prayer has to do with the proceedings had before Judge Angeles on March 13, 1947. In subdivision III of his answer to the petition herein the respondent judge, through his counsel, in referring to the

hearing had on March 13, 1947, after the denial of the petition for postponement of said hearing, alleges: (a) that the hearing of the case on the merits had been postponed to March 13, 1947, pursuant to the joint petition or stipulation of the parties themselves (Annex 1 of said answer); (b) that the petition for postponement was made verbally in court and was vigorously opposed by the plaintiff; (c) that the petition for default and the petition for reconsideration of the order granting the appointment of receiver could not hinder the hearing of the case on the merits on March 13, 1947; and (d) that the reservation made by the court as respects the resolution of the petition for reconsideration was due to the manifestation of the defendant's counsel made in open court that he wanted to present evidence in support of said petition for reconsideration, which evidence, he said, he was going to present at the hearing of the case on the merits, so that the court felt justified in ordering that the hearing of the case on the merits proceed, the petition for reconsideration to be passed upon after the presentation of evidence, which would serve for the decision on the merits and also for the resolution of the said petition for reconsideration. It is further averred that in fact the hearing was commenced forthwith on March 13, 1947, with the plaintiff presenting her evidence, but due to lack of time it was ordered to be continued on April 22, 1947, but was again postponed until further assignment on motion of defendant Lama, now petitioner, in view of the pendency of the present proceedings. This last allegation is substantiated by the petition to transfer the hearing filed by said Lama as defendant in the court below (Annex 2 of the answer) and the order of the respondent judge granting the same (Annex 3 of the answer).

In view of the foregoing circumstances, we are clearly of opinion that the respondent judge committed no abuse of discretion in proceeding, as he did, commencing the hearing on the merits and postponing its continuation until further assignment as prayed by the therein defendant himself. In the same way, we find absolutely no showing of abuse of discretion on the part of the judge in reserving until after the presentation of evidence on the merits the resolution of the therein defendant's petition for reconsideration of the appointment of receiver.

As to the refusal of the respondent judge (par. [c], prayer of petition) to declare the therein plaintiff Apacible, herein respondent, in default for failure to answer petitioner's (defendant's) counterclaim, and to allow said defendant to present his evidence in support of said counterclaim under Rule 35, section 5, it appears that the reply to said counterclaim (Annex I of petition) was filed under date of December 16, 1946, but appears to have been actually filed on December 20, 1946, according to the respondent judge's answer (page 5), and the petition to declare the therein plaintiff in default as to said counterclaim was not filed until almost two months thereafter, that is, on February 13, 1947 (Annex O of petition). Rule 15, section 16, provides that upon motion and on such terms as may be just the court may extend the time to plead provided in the Rules, and section 17 of the same Rule provides that all pleadings shall be liberally construed so as to do substantial justice.

We need not say that the pleading containing such reply (Annex I of petition) may be liberally construed so as to be understood as praying the court for leave to file said reply beyond the reglementary period. We say this because at any rate the counterclaim contained in the answer (Annex E of petition) merely alleges that the defendant "reproduces by reference all allegations set forth in paragraphs 1 to 13 inclusive, of this answer," and then, it contains an allegation which is nothing more nor less than a repetition of previous allegations already made, by way of special defenses, in the same answer, with the averment of the legal conclusion that "the defendant is entitled to the full and complete legal ownership of the land in question, free from all liens and incumbrances, and the plaintiff is legally bound to execute the necessary document of sale and transfer of the title to said land to the defendant." Some of the allegations of that answer referred to in the counterclaim were made in answer to the averments of the first and second causes of action in the complaint, some admitting, others denying, and still others qualifying said allegations, and the others were made by way of special defenses, but all of such allegations, so far as they were of facts, needed no reply from the plaintiff, as respects those which did not contain new matter, and as respects those which contained new matter, the plaintiff could either reply to them at the

beginning of the trial or abstain from so doing, in which last case such new matters would be deemed controverted any way (Rule 11, section 1); and the averments of conclusions or points of law naturally needed no reply. And as to all of said classes of allegations, there was, of course, no occasion for default. As a consequence of what has been stated above, there was really no practical need of a reply to the aforesaid counterclaim. In other words, for his own defense against the plaintiff's action, the defendant at any rate would have to prove those allegations of facts in his answer whether or not they were expressly denied by the plaintiff, and the latter would have the right to offer rebutting evidence. Thereafter the facts to be found by the court will not be any different for the purposes of the counterclaim than for the purposes of the complaint and answer.

Turning our attention now to the question of the appointment of the receiver by the respondent judge, our determination thereof must primarily start from the fundamental and well-settled principle that the matter of the appointment of a receiver is largely within the discretion of the court to which the petition is addressed, provided that court is one of those to which the law or the rules grant the requisite power. High on Receivers (4th ed., p. 12, par. 7), states the principle as follows:

"Discretionary character of the jurisdiction; discretion defined.—The appointment of a receiver pendente lite, like the granting of an interlocutory injunction, is to a considerable extent a matter resting in the discretion of the court to which the application is made, to be governed by a consideration of the entire circumstances of the case. And since the appointment of a receiver is thus a discretionary measure, the action of the lower court in appointing or denying a receiver pendente lite will not be disturbed upon appeal unless there has been a clear abuse. But the discretion thus vested in the chancellor in the matter of appointing receivers pendente lite is not an absolute or arbitrary one but it is a sound judicial discretion in view of all the circumstances of the case, to be exercised for the promotion of justice where no other adequate remedy exists." (See also *Teal Motor Company vs. Court of First Instance of Manila*, 51 Phil., 549.)

It will be noted that in paragraph 8 of the complaint (Annex A) filed by respondent Apacible, as plaintiff in civil case No. 3932 of the Court of First Instance of Batangas, she makes a positive claim of ownership over all of the products of the lands in question consisting of palay in the agricultural year 1944-1945, as well as the products in the subsequent agricultural years. So that said products were and are a part of the "property in litigation" within the meaning of Rule 61, section 1 (e). And even as to the parcels of land in controversy, the receivership appeared to the respondent judge as the most convenient and feasible means of administering said realty, in which we concur with His Honor, because from the same parcels of land the past palay crops, unquestionably fungible in character, were harvested and future ones will have to be planted, cared for and harvested. It behooved both parties to keep the lands productive in the meantime, and under the facts then before the court the most convenient course was to appoint a receiver to administer the lands and their products—the receiver will act as the court's, not either party's, agent. (*Teal Motor Company vs. Court of First Instance of Manila*, supra.) We are of opinion that no showing has been made of any abuse of the trial court's discretion in the premises. And the remedy resting largely in the lower court's discretion, it would only be fair to set forth herein the respondent judge's own exposition of the reasons which impelled him to appoint the receiver. Those reasons are stated under the appropriate heading in the respondent judge's answer herein as follows:

"I. AS TO THE APPOINTMENT OF A RECEIVER:

"A. The appointment of a receiver in the case referred to (*Consolacion N. Vda. de Apacible vs. Mena Lama*, No. 3932) falls squarely under pars. (b) and (e) of section 1 of Rule 61, inasmuch as:

"(a) There is prima facie showing in the pleadings sufficient, at least, to be a basis for the appointment of a receiver that plaintiff Apacible has interest in the property and the products thereof, in litigation, inasmuch as:

"(1) It is averred in the complaint that the plaintiff is the owner of the property with a Torrens title thereon

issued in her favor (see par. 2, Annex A of the petition), and the defendant admits that such Torrens title has been really issued in favor of the plaintiff (paragraph 2, defendant's answer, Annex E of the petition); and it is further averred in the complaint, supported by the notarial document, Exhibit A, attached thereto, dated September 10, 1941, that the said property was leased by the plaintiff to the defendant for 5 years, at a yearly rental of 70 cavanos of palay, with an option to purchase for P2,625, within the same period, and that the failure of the defendant to comply with the terms of the said contract, particularly in the payment of the rents, would extinguish the lease and the option to purchase (Exhibit A attached to the complaint, Annex A of the petition), and that Lama failed to deliver 40 cavanos of palay to complete the rent for 1941-1942, and 70 cavanos of palay for the rent for 1943-1944. (See complaint, Annex A of the petition.) The lease contract is not controverted by the defendant Lama, although he alleges that he had complied with the terms and conditions of the same, and that he has already become entitled to a deed of sale of the said property after having deposed in the Court of First Instance of Manila in the case entitled 'Mena Lama vs. Consolacion N. Vda. de Apacible' No. 2539, in June, 1944, the price of the property and the rents then due; these averments are controverted by the plaintiff Apacible (see Reply, Annex I of the petition);

"(2) From defendant's (Lama) answer to the complaint (Annex E of the petition, par. 9), it appears that what he alleges to have offered to the plaintiff and deposited in the Court of First Instance of Manila in the case 2539 hereinabove referred to, on or about June 27, 1944, was P2,950.60 for the price of the land and price of the palay as rentals due (P2,625 for the price of the land and P325.60 for the price of the palay rentals); the plaintiff, although she does not admit the allegation with regards to such deposit, she avers that in any event the amount alleged to have been offered and deposited by the defendant Lama was in Japanese military notes and, at any rate, such offer was not in accordance with the contract which called for palay as rents and genuine Philippine money as price (see, Reply, Annex I of the petition, pars. 4-12). Defendant Lama's allegation, therefore, of such offer does not serve to destroy per se the interest of the plaintiff in the property and plaintiff's contention that defendant has failed to comply with his obligations as stipulated in the contract. While this is, of course, the issue to be decided in the decision of the case on the merits, plaintiff's interest in the property and in the products thereof by virtue of her certificate of title and the terms of the contract of lease, cannot be disregarded in the meantime and it serves, at least, for the appointment of a receiver.

"(b) From the pleadings, it also appears that defendant Lama is retaining the possession of the land in question, taking the share for the owner of the crops thereof, and disposing of such share without delivering any portion thereof to the plaintiff up to the present time;

"(c) From the foregoing, it is obvious that in the meantime that the conflict between the parties is not finally decided, the property should be placed in the hands of a receiver who takes charge of the property and its products, under the control of the Court, to be delivered to the party that may be finally adjudged as entitled thereto;

"(d) The defendant has not been denied opportunity to be heard in connection with the motion for receivership; in fact the hearing of the petition was set for January 8, 1947 (Annex F-1 of the petition) and defendant Lama filed his written opposition (Annex H of the petition), which was taken into consideration in the resolution (Annex J of the petition). There was no need to postpone such hearing as requested by Lama's counsel in his motion (Annex G of the petition), for the purpose as he stated 'that he desires to appear and argue personally at the hearing in opposition to said petition,' inasmuch as the matter was already sufficiently discussed in the petition for receivership (Annex F of the petition) and in the written opposition (Annex H of the petition), and the ground for receivership appeared already in the pleadings;

"(e) The relationship between plaintiff Apacible and the person appointed receiver (it has been admitted in court on March 13, 1947, that they are distant relatives), does not disqualify such receiver, there being no legal prohibition that a relative of one of the parties, and a distant one at that, cannot be appointed receiver, who after all, is responsible to and is always under the control and orders of the court, and whenever a misconduct on her part is shown she can be removed and held accountable."

We think that, in proceeding as he did, the respondent judge properly exercised the discretion which the rules conferred upon him in the matter. However, the receiver should be made to file a bond pursuant to Rule 61, section 5.

Wherefore, the petition is denied, with costs against the petitioner. So ordered.

Moran, C.J., Feria, Pablo, Bengzon, Hontiveros, Padilla, and Tuason, JJ., concur.

DISSENTING

PERFECTO, J.:

Respondent Apacible filed against petitioner a complaint, dated June 14, 1945, praying that the lease contract upon three lots of land located in Lian, Batangas be declared terminated; that petitioner be ordered to deliver them to plaintiff, including 110 cavanos of palay as rents up to the agricultural year 1943-44, and, thereafter, 124 cavanos of palay as the net harvest for each succeeding agricultural year; that petitioner's right to purchase said three lots be declared extinguished, and that petitioner be ordered to pay the costs.

In his answer, dated November 27, 1946, petitioner alleged that for many years before and during the year 1941, there was existing an agrarian controversy between the tenants of the Hacienda de Lian and the owner thereof, Colegio de San Jose; that the tenants, petitioner being one of them, brought the controversy before the Court of Industrial Relations, against the owner and the manager N. B. Sinclair; that the case involved other persons from the municipalities of Balayan and Tuy who purchased parcels of land occupied by the tenants; that to settle amicably the controversy, the court gave the tenants a period of time within which to purchase the respective lands occupied and leased by them, by depositing with said court or with Sinclair the value agreed upon.

Petitioner, the answer continues, borrowed money from his brother-in-law, Dr. Gregorio Limjoco, to make the initial deposit on the price of the lot in question. At Dr. Limjoco's suggestion, who needed to be refunded of the loan granted to petitioner, the latter approached respondent Apacible for a loan with which Limjoco may be reimbursed and the balance of the purchase price of the lands be paid. Respondent Apacible agreed to grant the loan with an interest consisting in 70 cavanos of palay annually for a period of five years, but imposed the condition that, instead of executing a deed of loan, that the deed of sale of the land in question be executed by Sinclair in the name of Apacible, who will grant petitioner a five-year lease from September, 1941, with the option to purchase the lands for the sum of P2,625.

Petitioner had to agree to the arrangement as it was the only alternative open to him. In 1944, he offered Apacible P2,625 as purchase price for the lands, but Apacible refused the tender, and petitioner instituted an action in the Court of First Instance of Manila to compel Apacible to execute a deed of sale of the lands, depositing the corresponding amount with the court. The record of the case was destroyed, and all efforts of petitioner to reconstitute it was blocked by Apacible. Petitioner prayed in his answer for the dismissal of the complaint and, among other things, that he be declared as the true and lawful owner of the lands in question for having exercised his option to purchase them. On December 16, 1946, six months after the complaint was filed, Apacible filed a petition for the appointment of a receiver to take charge and possession of the three lots of land described in the complaint as well as of the crops that may be harvested therefrom.

Petitioner filed an opposition to the petition alleging several reasons, among them, that he is the absolute owner of the lands in question and that all the expenses and costs of cultivation and production of the palay crops has been and will always be defrayed by petitioner, without Apacible contributing a cent therefor, and that, as a

consequence, said respondent has no interest or right to said crops and that petitioner is financially able to respond to any judgment for the payment of all the rents that the court may adjudicate.

From the pleadings of both parties, there is no question that the effect of the appointment of a receiver will be to take the lands in question from petitioner's possession before a final adjudication as to the ownership of the lands in question. From the pleadings it appears that petitioner is among the Lian tenants who were able to find a solution to their agrarian controversy with the owners of the Lian estate, by being allowed to purchase the lands he had possessed for many years. But then he had fallen into another controversy with a money lender who pretended to assume the ownership of the lands for which petitioner had fought for many years. Evidently, the controversy between the parties raises a clear question of social justice.

The appointment of a receiver in this case is tantamount to prejudicing the controversy against petitioner, by a summary ejectment from the lands he had been occupying for many years, and to depriving him of the palay crops for which he defrayed all the expenses of cultivation and production, without respondent Apacible contributing a single iota of energy nor a single cent, a procedure that cannot find support in any principle of justice.

We are of opinion that the petition is well-founded, and that the orders of respondent judge dated January 14, 1947 and January 21, 1947, concerning the appointment of the receiver in question in civil case No. 3932 of the Court of First Instance of Batangas, should be set aside.

PARAS, J.:

I concur.

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